



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Ronni Pownall</i> 6 Sept 2018	GENERAL MANAGER ACTION REQ'D:			
DATE: 8/22/2018	BOARD INITIATED ITEM: No			
Originator/Prepared by: Abigail Thorne-Lyman Dept: Planning, Development & Construction <i>Abigail M. Lyman</i> Signature/Date: Sept. 4, 2018	General Counsel <i>W.B.N.</i> 9/5/18 [ ]	Controller/Treasurer <i>M.M.H.</i> 9/6/18 [ ]	District Secretary [ ]	BARC <i>C.L.H.</i> 9/5/2018 [ ]

### Lake Merritt Transit-Oriented Development: Authorization to Enter into Exclusive Negotiating Agreement

#### PURPOSE:

To authorize the General Manager or her designee to execute an Exclusive Negotiating Agreement (ENA) with the East Bay Asian Local Development Corporation (EBALDC)/Strada Investment Group for Transit-Oriented Development (TOD) at the Lake Merritt BART station.

#### DISCUSSION:

BART owns three city blocks on and adjacent to the Lake Merritt BART Station: the BART plaza block which will accommodate the new Transit Operations Facility and redesigned Plaza; the BART patron surface parking lot between Oak and Fallon Streets; and the Metro Center Building at 101 8<sup>th</sup> Street.

In 2011, BART staff issued a solicitation seeking a developer of the BART surface parking lot and plaza. BART selected a developer for the site; however, the developer subsequently withdrew when it determined that that market in the area was not ready for a development.

Concurrently, BART staff were engaged with the City of Oakland and community in developing the Lake Merritt Station Area Plan, which was initiated in 2008 and adopted by the City of Oakland in 2014. The Specific Plan established a vision for the larger area and zoned the BART-owned properties for mixed-use development at a maximum of 275'. These properties have the tallest height limit in the Specific Plan area.

With the City's Specific Plan adopted, recession over and a growing regional housing crisis, as well as several newly adopted BART policies including Affordable Housing, TOD and Station Access, BART and the City agreed to initiate a new solicitation for a developer of the two BART-owned properties: the surface parking lot and the Metro Center building site at 101 8th Street. Based on the Specific Plan and BART policies, the District was seeking a financially feasible, high-rise mixed-use development, featuring commercial office, and both affordable and market-rate housing, and community-engaged design, with a focus on active access and minimal parking.

From December 2017 to February 2018, BART staff hosted three stakeholder meetings to establish the goals and objectives for TOD on the property. On March 2, 2018 staff released a Request for Qualifications for developer teams. BART received eight submittals, indicating a strong interest in development on the property.

An evaluation committee comprised of BART and City of Oakland Staff, as well as community and institutional stakeholders, reviewed the proposals and four teams were invited to respond to a Request for Proposals (RFP), which BART issued on May 25, 2018. These teams were:

- East Bay Asian Local Development Corporation (EBALDC) / Strada Investment Group
- Hines Interest Limited Partnership
- Lane Partners
- McGrath Properties, Inc. / Boston Properties

During the evaluation process, Boston Properties decided it was no longer interested in pursuing the RFP, but its partner, McGrath Properties, did want to continue. Because Boston Properties' main strength in the RFQ process was as a financial partner, staff directed McGrath to provide a partner for consideration who was as well capitalized as Boston Properties. McGrath proposed partnering with Brookfield Residential Properties, Inc., an international developer. BART staff reviewed Brookfield's qualifications and determined that their financial contribution to the team was equivalent to Boston Properties, and the McGrath/Brookfield team was authorized to continue in its response to the RFP.

Staff received proposals from all four teams on August 5, 2018. An evaluation committee of ten individuals including BART staff, City staff, community stakeholders, and institutional stakeholders reviewed the written proposals, and conducted interviews with all four teams on August 28, 2018. Proposals were scored using criteria in the following categories:

- *Development Program:* proposal includes high rise office and residential and maximizes allowable building envelope; quantity and depth of affordable housing; quality of urban design; low parking ratios and transportation demand management programming; structural engineering, especially for development over the tracks.

- *Financial Offer and Feasibility:* Reasonableness of cost, revenue and subsidy assumptions; Financial return to BART from both lease terms and BART ridership increases; dollar value of community benefits; phasing and implementation.
- *Community Engagement:* Approach to engaging community in design of development; approach to community benefits negotiation process; approach and experience with involving BART, City and other agencies.
- *Team Member Information:* Strength of team in completing pre-development activities; percentage commitment to small business participation.

Based on the committee scoring on these criteria, as well as the strength of the teams in the oral interview, the teams were ranked as follows:

1. EBALDC/Strada Investment Group (“EBALDC/Strada”)
2. Lane Partners (“Lane”)
3. McGrath Properties, Inc./Brookfield Residential
4. Hines Interest Limited Partnership

While the committee received numerous strong proposals, the EBALDC/Strada term performed more strongly than the others, particularly on the basis of:

- A development program that is fully aligned with Specific Plan and BART’s Goals & Objectives
- Proposed depth and quantity of affordable housing units
- Highest proposed ground lease payments to BART, and strong ridership
- Robust community engagement process and deep knowledge of the surrounding community
- Highest proposed small business participation commitment (35%)

A consideration with the EBALDC/Strada team’s proposal is that project delivery is predicated on applying for, and receiving a high level of subsidy from federal, state, county, and local sources, as well as a proposed capital campaign. The risk in not receiving these subsidy sources is that the project may take longer to complete when compared to other proposals, and that BART’s ground lease revenue may be at risk if the development team is unsuccessful in receiving funds. However, staff determined that the individual assumptions regarding subsidy for each segment of the project was reasonable and the risk is reasonable given the high profile nature of this development within BART’s TOD portfolio, the team’s track record with securing the proposed subsidy types and amounts, and the project’s competitive location for tax credits, state Affordable Housing and Sustainable Communities funds, and federal Opportunity Zone investments.

The second ranked Lane team provided a strong proposal that was slightly less reliant on subsidy, but this team’s proposal included one high-rise building that exceeded the Specific Plan height limits, and was second ranked in numerous criteria including affordability, ground

lease payments, and small business participation. Further, the proposed community engagement approach was robust and well thought through, but the committee did not believe it reflected as deep a knowledge of - or tailoring to - the surrounding community. Nonetheless BART staff believe that the Lane team could successfully deliver a transit-oriented development that is aligned with the Specific Plan and BART's Goals and Objectives for the site, if the EBALDC/Strada team were for some reason unable to advance development.

Given these rankings, staff requests authorization to advance a transit-oriented development project at Lake Merritt BART station with a joint venture comprised of EBALDC and Strada, with the provision that if staff and EBALDC/Strada cannot in good faith negotiate an ENA or substantially meet the terms of the ENA in a timely manner, staff may pursue an ENA with the second ranked team of Lane. This provision will protect BART from a situation where a developer withdraws, and the TOD is stalled.

If staff determine that EBALDC/Strada have substantially met the terms of the ENA, but are not ready to return to the Board with a project and ground lease option at the end of the 24 month ENA period, staff may request of the Board an extension with EBALDC/Strada, which would include a similar ENA fee requirement.

### **FISCAL IMPACT:**

If approved, BART staff in the Real Estate and Property Development Department will work with the selected developer to execute an Exclusive Negotiating Agreement and initiate work on development scoping. BART Staff time (0.5-0.75 FTE) is programmed into the operating budget and the FY 2019 work plan already. BART will receive a \$100,000 ENA fee to compensate some BART staff time and consultant and legal fees during the term of this ENA, with a provision in the ENA that this amount will be increased to compensate for BART's expenses as negotiated. This action will not have any impact on unprogrammed District reserves.

The initial, non-binding proposal includes ground lease revenue and ridership increases that are favorable to BART. The ground lease terms are yet to be negotiated, but staff will ensure that the combination of the ground lease and off- or reverse-commute ridership revenues result in a net positive fiscal impact to BART. The BART Board will review the terms of the deal at key milestones to monitor its fiscal impact and ultimately approve the deal terms.

### **ALTERNATIVES:**

1. Do not authorize staff to proceed with an Exclusive Negotiating Agreement. Staff will not pursue the Lake Merritt TOD further without direction from the Board.
2. Authorize staff to proceed with a different team.

**RECOMMENDATION:**

Adopt the following Motion.

**MOTION:**

Authorize the General Manager or her designee to enter into an exclusive negotiating agreement (ENA) with a joint venture comprised of the East Bay Asian Local Development Corporation and Strada Investment Group for a term of 24 months.

If BART and this joint venture cannot in good faith negotiate an ENA or if the joint venture cannot substantially comply with the terms of the ENA, authorize the General Manager or her designee to enter into an ENA with Lane Partners for a term of up to 24 months.